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Equal Protection, Court of Appeals: Trustees of Union College v. Schenectady City Council

U.S. CONST. amend. XIV § 1:

No State . . . shall . . . deny to any person within its jurisdiction the equal protection of the laws.

N.Y. CONST. art. I, § 11.

No person shall be denied the equal protection of the laws of this state or any subdivision thereof . . . .

COURT OF APPEALS

Trustees of Union College v. Schenectady City Council[1]
(decided December 18, 1997)

Respondent, Union College, owned seven properties located in an area known as the General Electric Realty Plot in the City of Schenectady [hereinafter "Realty Plot"].[2] The Realty Plot ultimately developed into a distinctive residential neighborhood composed of a nine block area adjacent to the Union College campus.[3] In 1978, the City adopted an ordinance which established an historical district for single families incorporating the Realty Plot.[4] Initially, "[e]ducational, religious, philanthropic and eleemosynary institutions could apply for special use permits within the Historic District."[5] In 1984, the City amended its zoning provisions which limited permitted uses within the Historic District to single-family dwellings.[6] The special permit

[1] 91 N.Y.2d 161, 690 N.E.2d 862, 667 N.Y.S.2d 978 (1997).

[2] *Id.* at 164, 690 N.E.2d at 864, 667 N.Y.S.2d at 980. The area was established in 1899 to attract General Electric managers, scientists and others to Schenectady. *Id.*

[3] *Id.*

[4] *Id.* In an effort to preserve the historical sense of the area, the ordinance limited property uses to large, single family residences. *Id.*

[5] *Id.*

[6] *Id.*

uses were restricted to public utility facilities, substations and structures.[7] Most notably, all other special uses permitted from 1978 to 1984, including but not limited to, educational uses were foreclosed.[8] The ordinance "allowed a property owner who could show 'practical difficulties' or 'unnecessary hardships' to obtain a variance."[9]

Union College proposed that the City ordinance embodied in Schenectady City Code Section 264-8(C) be amended to include nonresidential educational uses as a special permit use within the District by confining its proposal to "faculty offices, administrative offices and homes for visiting dignitaries and guests of the college."[10] The college was denied its request when the City's Historic Districts Commission and the New York State Office of Parks, Recreation and Historic Preservation both projected that the proposed amendment would impair the historic preservation values of the Realty Plot.[11]

In January 1995, Union College abandoned its pursuit of an amendment and commenced an action against the City, its Mayor and the Schenectady City Council, seeking declaratory judgment that the City's invocation of City Code Section 264-8(C) was unconstitutional on its face.[12] The New York State Court of

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[7] *Id.*

[8] *Id.*

[9] *Id.* The Schenectady City Code § 53[B] allowed a property owner the opportunity to obtain a variance if such "practical difficulties" or "unnecessary hardships" could be shown. *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.* at 165, 690 N.E.2d at 864, 667 N.Y.S.2d at 980. If Union College could demonstrate a deprivation of equal protection under the law pursuant to the Fourteenth Amendment of the United States Constitution or Article I § 11 of the New York State Constitution, its challenge may be upheld by the court. *Id.* Union College opposed the amendment as it imposed increased burdens on the college that would not have been imposed on single family dwellings and other public structures without a substantial relation to the state's objective for promoting its police power. *Id.* *See* U.S. CONST. amend. XIV § 1. The Fourteenth amendment states in pertinent part: "Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *Id.* *See* N.Y. CONST. art. I., § 11. This article provides in pertinent part that: "No

Appeals affirmed the decision by the Appellate Division in favor of Union College.[13]

Although a presumption of constitutionality exists for legislative enactments, the decision by the Court of Appeals emphasized that such presumptions are not irrebuttable.[14] The State argued that its police power provided the foundation for the delegation of municipal zoning authority.[15] However, "a zoning ordinance will be struck down if it bears no substantial relation to the police power objective of promoting the public health, safety, morals or general welfare" of a community.[16] The Court of Appeals has recognized that municipalities may "enact land-use restrictions or controls to enhance the quality of life by preserving the character and desirable aesthetic features of a city"[17] and that legislatures have the authority to "manage the historical and cultural properties under their jurisdiction in a spirit of stewardship and trusteeship for future generations."[18] However, no significant proof was shown by the State to demonstrate a substantial relation to the promotion of the public health, safety or morals of the community.[19] In effect, the ordinance deprived Union College its constitutional rights under the Equal Protection Clause of the Federal and New York State Constitutions.[20] The State is

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person shall be denied the equal protection of the laws of this state or any subdivision thereof . . . . " *Id.*

[13] *Union College*, 91 N.Y.2d at 168, 690 N.E.2d at 866, 667 N.Y.S.2d at 982.

[14] *Id.* at 165, 690 N.E.2d at 864, 667 N.Y.S.2d at 980.

[15] *Id.*

[16] *Id.* (quoting Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 395 (1926)).

[17] Penn Central Transp. Co. v. City of New York, 438 U.S. at 129 (1978) (holding that a restrictive zoning ordinance could be imposed without violating the Constitution by relying upon the landmark status of a structure).

[18] *Union College*, 91 N.Y.2d at 165, 690 N.E.2d at 865, 667 N.Y.S.2d at 981.

[19] *Id.* at 167, 690 N.E.2d at 865, 667 N.Y.S.2d at 981. "Depriving [Union College] of the opportunity to have its presumptively beneficial education use weighed against competing interests . . . bears no substantial relation to the public health, safety, morals or general welfare." *Id.*

[20] *See supra* note 12 and accompanying text.

required to balance a particular applicant's educational use against the public interest in historical preservation to allow for a proper inquiry rather than imposing burdens on the college to apply for a variance or to seek amendment of the law.[21]

In *Cornell University v. Bagnardi*,[22] the New York Court of Appeals examined the correct balance to be struck when educational institutions seek expansion into a residential zone.[23] The Court of Appeals addressed the proper method of balancing the needs and rights of educational institutions against the concerns of the surrounding residents by searching for potential inconveniences to the residents.[24] Further, the court concluded that the governing standard should be the protection of the public's health, safety, welfare and morals.[25]

Cornell University wanted to move its Modern Indonesia Project[26] to a large house it owned in the Cornell Heights area adjacent to the Cornell campus.[27] The City of Ithaca Zoning Ordinance precluded schools above the college level to be permitted in the area in which Cornell wanted to relocate.[28] Cornell applied for a variance to the ordinance which was denied and the Board stressed that Cornell had shown no need to move its program to the particular site it had chosen.[29] Cornell commenced a declaratory judgment action seeking a declaration that the ordinance was unconstitutional.[30] The Court of Appeals could not find that Cornell's educational use of the land would

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[21] *Union College*, 91 N.Y.2d at 167, 690 N.E.2d at 866, 667 N.Y.S.2d at 982.

[22] 68 N.Y.2d 583, 503 N.E.2d 509, 510 N.Y.S.2d 861 (1986).

[23] *Id.*

[24] *Id.* at 589, 503 N.E.2d at 511, 510 N.Y.S.2d at 863.

[25] *Id.*

[26] *Id.* The Modern Indonesia Project is "an interdisciplinary academic program involving fifteen people." *Id.*

[27] *Id.*

[28] *Id.* "A 'school' was defined as a 'public, private or church-affiliated establishment academically below the college level, for the education of children and for adults in subjects or skills." *See* City of Ithaca Zoning Ordinance § 30.3[78].

[29] *Bagnardi*, 68 N.Y.2d at 589-90, 503 N.E.2d at 511, 510 N.Y.S.2d at 863.

[30] *Id.*

endanger the public's health, safety or welfare.[31] Furthermore, the Court of Appeals upheld the Appellate Division's holding that the City of Ithaca Zoning Ordinance did not properly distinguish between educational uses at the post-secondary level and below.[32] Similarly, in the case of *Diocese of Rochester v. Planning Board*,[33] the New York Court of Appeals held that "an ordinance which permitted public schools but excluded religious or private schools would not withstand challenge" in New York because the church and school are clearly in furtherance of the public morals and general welfare.[34] The Court of Appeals posits that the overall impact on the public's welfare is the focus of its inquiry.[35]

Since the zoning boards in *Cornell* and *Union College* used an impermissible criterion that demanded that schools demonstrate a need for the proposed expansion, the ordinance could not be upheld.[36] Cornell and Union College should have been afforded the opportunity to apply for a special permit without showing a special need, and the municipalities should determine whether reasonable conditions need to be imposed that would decrease any negative effects on the surrounding community.[37] Without these safeguards, the school seeking the permit is not afforded equal protection under the law.[38]

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[31] *Id.* at 590, 503 N.E.2d at 512-13, 510 N.Y.S.2d at 863-64.

[32] *Id.* "Historically, schools and churches have enjoyed special treatment with respect to residential zoning ordinances and have been permitted to expand into neighborhoods where nonconforming uses would otherwise not have been allowed." *Id.* It is argued that sprawling universities bring increased traffic and other inconveniences while the benefit of a university is overcome by its burdens to the community. *Id.* Communities in close proximity to colleges or universities are concerned that a new school would bring people from other communities who would disrupt the peace and quiet of the neighborhood. *Id.*

[33] 1 N.Y.2d 508, 136 N.E.2d 827, 154 N.Y.S.2d 849 (1956).

[34] *Bagnardi*, 68 N.Y.2d at 593, 503 N.E.2d at 514, 510 N.Y.S.2d at 866 (citing Diocese of Rochester v. Planning Bd., 1 N.Y.2d 508, 136 N.E.2d 827, 154 N.Y.S.2d 849 (1956)).

[35] *Id.* at 595, 503 N.E.2d at 515, 510 N.Y.S.2d at 867.

[36] *Id.* at 596-97, 503 N.E.2d at 516, 510 N.Y.S.2d at 868.

[37] *Id.* at 596, 503 N.E.2d at 516, 510 N.Y.S.2d at 868.

[38] *See supra* note 12.

In *Penn Central Transportation Company v. City of New York*[39] the Supreme Court of the United States held that restrictions placed on the development of individual historic landmarks imposed by zoning ordinances do not effect an unconstitutional taking requiring compensation.[40] The Court indicated that municipalities have enacted laws to encourage the preservation of buildings and areas with historic and aesthetic importance and refused to approve plans for construction of a fifty story office building over Grand Central Terminal.[41] Since the site was designated a landmark, the Court affirmed the New York Court of Appeals and Appellate Division's holding to reverse the injunctive relief granted by the Supreme Court, New York County.[42] It is worthy to note that the restriction survived constitutional muster because New York City is a worldwide tourist center, renowned as a world capital of business, culture and government which would be threatened if legislation were not enacted to protect historic landmarks.[43] The Court in *Penn Central* recognized that states and cities may enact land use restrictions or controls to enhance the quality of life by "preserving the character and desirable aesthetic features of a city."[44] Unlike *Cornell* and *Union College*, the zoning restriction in *Penn Central* was not discriminatory zoning which is "the antithesis of land-use control."[45] "When a property owner challenges the application of a zoning ordinance to his property, the judicial inquiry focuses upon whether the challenged

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[39] 438 U.S. 104 (1978).

[40] *See* U.S. CONST. amend. The Fifth Amendment states in pertinent part: "Private property [shall not] be taken for public use without just compensation." *Id.*

[41] *Penn Central*, 438 U.S. at 118. "[T]o balance a 55-story office tower above a flamboyant Beaux-Arts facade seems nothing more than an aesthetic joke. Quite simply, the tower would overwhelm the Terminal by its sheer mass. The 'addition' would . . . reduce the Landmark itself to the status of a curiosity." *Id.* at 118-19.

[42] *Id.* at 119-20.

[43] *Id.* at 109.

[44] *Id.* at 129.

[45] *Id.* at 132. The New York City law was designed to preserve structures that would retain the history and beauty of the city. *Id.*

restriction can reasonably be deemed to promote the objectives of the community land-use plan, and will include consideration of the treatment of similar parcels."[46]

In *Union College*, the zoning regulation deprived the college from the equal protection of the law because similarly situated parties, such as public utility facilities, substations and structures were able to apply for special use permits.[47] The zoning ordinance proved to be discriminatory to educational institutions which did not pose any risk of harm to the public's general welfare.[48]

In conclusion, *Union College* clearly articulates that the presence of an educational use in a historical preservation district will not presumptively destroy a city's environment.[49] The New York Court of Appeals stated that the zoning ordinance is unconstitutional because the City code "serves no end that is substantially related to the promotion of the public health, safety, morals or general welfare."[50] The court concluded that the ordinance was irrational as it did not survive rational basis scrutiny.[51] However, in *Penn Central*, a legitimate state interest was identified to maintain the historical preservation of Grand Central Station.[52] Analysis of *Union College* and *Bagnardi* as

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[46] *Id.* at 104 n.29.

[47] Trustees of Union College v. Schenectady, 91 N.Y.2d 161, 167, 690 N.E.2d 862, 866, 667 N.Y.S.2d 978, 982 (1997).

[48] *Id.* at 167, 690 N.E.2d at 866, 667 N.Y.S.2d at 982. "The public's interest in historical preservation . . . serves no end that is substantially related to the promotion of the public health, safety, morals or general welfare, and as such is unconstitutional." *Id.*

[49] *Id.* at 167, 690 N.E.2d at 865, 667 N.Y.S.2d at 981. "The ordinance [challenged in *Union College*] wholly excludes educational uses from the Historical District by improperly eliminating any opportunity for the balancing of individual educational uses against the public's historical preservation interests." *Id.*

[50] *Id.* at 167, 690 N.E.2d at 866, 667 N.Y.S.2d at 982.

[51] *Id.*

[52] Penn Central v. City of New York, 438 U.S. 104, 109 (1978).

compared to *Penn Central*[53] demonstrates that the former parties were similarly situated and not provided equal protection of the law, while the Supreme Court indicated in *Penn* that the parties were not similarly situated because Grand Central Station is an historic landmark which is different from the building complex which was proposed to be built upon the New York landmark.[54] Equal protection must be afforded to similarly situated parties and the social classification in *Union College*, which did not involve a suspect classification, would be unconstitutional as applied under the Federal and New York State Constitution.

SUPREME COURT

NEW YORK COUNTY

Walter v. City of New York Police Department[55]
(printed June 9, 1997)

Plaintiffs, applicants who had been excluded from the New York City Police Department Academy solely on the basis of their age, sought temporary and preliminary injunctive relief[56] challenging the New York City Administrative Code [hereinafter the "Code"] § 14-109 pursuant to § 296 of the Executive Law [hereinafter "Human Rights Law"] and § 8-107 of the Code.[57]

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[53] *See Union College*, 91 N.Y.2d at 167, 690 N.E.2d at 866, 667 N.Y.S.2d at 982. *See also* Cornell University v. Bagnardi,68 N.Y.2d 583, 503 N.E.2d 509, 510 N.Y.S.2d 861 (1986).

[54] *Penn Central*, 438 U.S. at 118.

[55] N.Y. L.J., June 9, 1997, at 30 (Sup. Ct. New York County), *aff'd*, 664 N.Y.S.2d 21 (1st Dep't 1997).

[56] *Id.*

[57] NEW YORK CITY ADMINISTRATIVE CODE, § 8-107. This statute provides that:

> It shall be an unlawful discriminatory practice: For an employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, sexual orientation or alienage or citizenship status of any person, to refuse to hire